DOCUMENT RESUME

ED 094 618 HE 005 733

TITLE	Academic Freedom, Professional Responsibility, and Tenure in the Utah System of Higher Education. Statement of Policy adopted by the Utah State Board of Regents, December 20, 1973.
INSTITUTION	Utah State Board of Higher Education, Salt Lake City.
PUB DATE	20 Dec 73
NOTE	28p.
EDRS PRICE	MF-$0.75 HC-$1.85 PLUS POSTAGE
DESCRIPTORS	*Academic Freedom; Due Process; *Higher Education; Job Tenure; *Personnel Policy; *Teacher Welfare; *Tenure
IDENTIFIERS	*Utah

ABSTRACT

Contained in this document is the policy statement from the Utah System of Higher Education. The contents include policy concerning: academic tenure, achievement of tenure; achievement of tenure by promotion or award, advance notice of termination or reduction in status, procedure for discipline and termination for cause, due process, procedures subsequent to notice, suspension pending action, sanctions, termination or other changes in status for other cause, terminations not governed by this statement, resignations, termination of a nontenured faculty member, and prior conduct. The appendix contains the system statement on quotas. (PG)

Introduction

In July 1971, Peter W. Billings, Chairman of the Utah State Board of Higher Education, appointed a special committee on Faculty Workload and Tenure consisting of Richard J. Maughan, Chairman, Richard L. Evans, Merrill J. Millet, Mrs. Jean Overfelt, and H. Bruce Stucki.

Following the death of Mr. Evans, October 31, 1971, Thomas S. Morison was appointed to fill his unexpired term on the Board and was named to the Committee.

Dr. Leon R. McCarrey, Associate Commissioner and Director of Academic Affairs, was assigned the demanding task of providing staff support to the Committee and correlating its efforts with those of the state universities and colleges.

The present document is the fruit of the intervening months and years, dozens of Committee meetings, expressions of concern and counsel from state legislators, Governor Calvin L. Rampton, faculties, educational associations, and other interested parties.

An initial draft statement was circulated to all institutions and other interested parties in January 1973. Responses were invited, and each state institution responded vigorously with considerable effort on the part of administrative officers and faculties.

The Higher Education Assembly of 1973, conducted in Salt Lake City, October 27, was devoted largely to a discussion of a second draft, and public hearings were held under Committee Chairman Maughan and Board Chairman Donald B. Holbrook (who succeeded Mr. Billings as Chairman in August 1973).

The present statement, as adopted by the Board December 20, 1973, reflects all these processes. Special recognition and acknowledgment must be extended to Dr. Leon R. McCarrey for compilation, correlation, drafting, and editing the final document in accordance with the policy decisions made. Any rights of "authorship" are properly deserved by him, together with the thanks and appreciation of all who labored on the project.

As set forth in its early paragraphs, it is the basic policy of the Board that each university and college prepare, for adoption by their respective Institutional Councils, a statement governing Academic Freedom, Professional Responsibility, and Tenure on each campus, in accordance with the guidelines and procedural requirements herein set forth. Action on the respective institutional statements is to be taken by the State Board of Regents, formerly State Board of Higher Education, on or before its July 1974 meetings.

G. Homer Durham
Commissioner of Higher Education

February 10, 1974

ED 094618

BEST COPY AVAILABLE

ACADEMIC FREEDOM, PROFESSIONAL RESPONSIBILITY, AND TENURE IN THE UTAH SYSTEM OF HIGHER EDUCATION

Statement of Policy

Adopted by the

UTAH STATE BOARD OF REGENTS

December 20, 1973

U S DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

HE 005 733

Published by

the Office of the Commissioner of Higher Education
1201 University Club Building
Salt Lake City, Utah 84111

February 1974

Utah State Board of Regents

Established 1969

Members of the Board

	Terms Expire
George C. Hatch, Salt Lake City Chairman	1977
Charles E. Peterson, Provo Vice-chairman	1979
Peter W. Billings, Salt Lake City	1975
Warren H. Bulloch, Cedar City	1977
D. Omer Buttars, Ogden	1979
J. Lynn Dougan, Salt Lake City	1977
Ira A. Huggins, Ogden	1977
Richard J. Maughan, Bountiful	1975
***Merrill J. Millet,** Roosevelt	1973
Thomas S. Monson, Salt Lake City	1975
Mrs. Jean Overfelt, Salt Lake City	1979
Luke G. Pappas, Price	1975
Rex G. Plowman, Lewiston	1977
Roy W. Simmons, Kaysville	1975
H. Bruce Stucki, St. George	1979

G. Homer Durham
Commissioner of Higher Education
and Chief Executive Officer

---

* Succeeded by Kendrick H. Harward, Feb. 1, 1974, whose term expires June 30, 1979.

Utah System of Higher Education

Member Institutions and Presidents

University of Utah (1850) Salt Lake City
David P. Gardner, President

Utah State University
Of Agriculture and Applied Science (1888) Logan
Glen L. Taggart, President

Weber State College (1889) Ogden
Joseph L. Bishop, President

Southern Utah State College (1897) Cedar City
Royden C. Braithwaite, President

Snow College (1888) Ephraim
Lee K. Thompson, Acting President

Dixie College (1911) St. George
Ferron C. Losee, President

College of Eastern Utah (1937) Price
Dean M. McDonald, President

Utah Technical College at Provo (1941) Provo
Wilson W. Sorensen, President

Utah Technical College at Salt Lake (1947) Salt Lake City
Jay L. Nelson, President

Institutional Councils

University of Utah

Edward W. Clyde, Chairman
Joseph E. Bernolfo, Jr., Vice-chairman
Reed W. Brinton • Harold Woolley
Robert H. Hinckley, Jr. • Fullmer H. Latter
Calvin W. Rawlings • Mrs. Dorothy Watkiss
Mrs. Bettye B. Gillespie

Utah State University
Of Agriculture and Applied Sciences

W. B. Robins, Chairman
Alva Snow, Vice-chairman
Jay R. Bingham • Glenn J. Mecham
J. D. Harris • L. Brent Hoggan
Beverly D. Kumpfer • Snell Olsen
Mrs. Jane Tibbals

Weber State College

Frank Francis, Jr., Chairman
Dale T. Browning, Vice-chairman
Dr. D. B. Green • Harold C. Steed
Joseph F. Breeze • Bruce Jenkins
Dr. Russell Caruth • Robert T. Heiner
Mrs. Patricia Oliver

Institutional Councils

(Continued)

Southern Utah State College

Kumen S. Gardner, Chairman
Dr. Reed W. Farnsworth, Vice-chairman
David L. Bigler • Jim R. Scarth
Mrs. Loretta Cline • Rex Harris
Elloyd T. Marchant • Robert R. Sonntag
John F. Piercey

Snow College

Angus H. Belliston, Chairman
Arthur H. Nielsen, Vice-chairman
Mrs. LaRue Nielsen • John Richards
A. Theodore Tuttle • Ward Killpack
Ralph Blackham • Mack Wilkey
Roger Hansen

Dixie College

Wayne Whitehead, Chairman
Mrs. Ruth R. Draper, Vice-chairman
Dr. A. W. McGregor • Rudger C. Atkin
H. Bernell Lewis • Neal M. Lundberg
James N. Kimball • Dr. Richard G. Whitehead
Richard W. Giaugue

Institutional Councils

(Continued)

College of Eastern Utah

Dr. Orson B. Spencer, Chairman
Frederick G. Stoye, Vice-chairman
Ray J. Bowen • F. Bennion Redd
John B. Gale • A. S. Veltri
O. Eugene Johansen • Paul Keller
Mrs. Bettina Black

Utah Technical College at Provo*

Utah Technical College at Salt Lake*

John L. Owen, Chairman
Mrs. Esther R. Landa, Vice-chairman
A. Glenn Christensen • Sheldon S. Allred
Stephen L. Garrett • Jesse Anderson
Mrs. Lila Bjorklund • Reuben D. Law
W. Robert Wright • William W. Cannon
E. Varian Mortenson

* By law the Utah State Board for Vocational Education is the governing board for both Utah Technical Colleges

Utah Legislative Council Planning Committee on Higher Education

1973

Established 1969

Senator **Douglas G. Bischoff,** Salt Lake City
Senator **Reed Bullen,** Logan
Senator **Merrill Jenkins,** Ogden
Senator **Karl G. Swan,** Tooele, Vice-chairman
Representative **Charles E. Bennett,** Salt Lake City
Representative **Danniel S. Dennis,** Roosevelt
Representative **Ronald T. Halverson,** Ogden, Chairman
Representative **David C. Harvey,** Pleasant Grove

Mr. Lewis H. Lloyd
Director, Legislative Council
326 Capitol Building, Salt Lake City, Utah 84114

Table of Contents

	Page
Member, Utah State Board of Regents	ii
System Institutions and Presidents	iii
Institutional Council Members	iv
Members, Legislative Planning Committee on Higher Education	vii
Table of Contents	viii
Members, Special Committee on Faculty Workload and Tenure	x
Board Policy on Academic Freedom, Professional Responsibility, and Tenure	1
Basic Board Policy	1
Statement of Academic Freedom, Professional Responsibility and Tenure	2
Academic Freedom	3
Academic Responsibility	3
Professional Responsibilities to the Students	3
Professional Responsibilities as Faculty	5
Professional Responsibilities to the Institution	5
Professional Responsibilities of Citizenship	6

Table of Contents

Page	
7	Academic Tenure
8	Achievement of Tenure
9	Achievement of Tenure by Promotion or Award
9	Advance Notice of Termination or Reduction in Status
9	Procedure for Discipline and Termination for Cause
10	Due Process
11	Procedures Subsequent to Notice
12	Suspension Pending Action
12	Sanctions
14	Termination or Other Changes in Status for Other Cause
15	Terminations not Governed by this Statement
15	Resignations, Applicability
15	Termination of Nontenured Faculty Member
15	Resignations
16	Prior Conduct
17	**Appendix "A"**
17	Quotas

The Special Committee on Faculty Workload and Tenure (1971-73)

Richard J. Maughan, Chairman
Richard L. Evans (to October 31, 1971)
Merrill J. Millet
Mrs. Jean Overfelt
H. Bruce Stucki
Thomas S. Monson

Leon R. McCarrey, EdD., Associate Commissioner of Higher Education, Director of Academic Affairs, Study Director and Coordinator for the Committee

Board Policy on Academic Freedom, Professional Responsibility, and Tenure

The responsibility of a faculty member to the community he serves has for generations been an important dimension of "scholarly tradition." In recent times, however, the range of roles and functions assumed have broadened at an accelerated pace. At the same time, there has been increasing pluralism in the realm of ideas, morals, idealogies, aspirations, and other facets of our culture. As a result, today's faculty member is confronted with an increasing level of performance expectations from a more diverse constituency.

There are, in addition, insistent pressures from the executive and legislative bodies of government, citizen groups, and other "guardians of the public trust" which suggest the need for greater specificity as to what the responsibilities of a faculty member shall be.

In keeping with the concerns expressed above and written statutory mandates from the legislature, the Board proceeded to review existing institutional practices and policies and to develop a ". . . prescribed system of tenure in all institutions"[1] within the Utah System of Higher Education. Recognizing that the institutions comprising the System vary greatly in size, traditions, faculty backgrounds and interests, the Board has elected not to impose a uniform code upon all institutions. Rather, it has chosen to provide policy guidelines for use by each institution in developing its Statement of Academic Freedom, Professional Responsibility, and Tenure; one which is responsive to the uniqueness of each institution and the particular constituencies it serves.

Basic Board Policy

It is the policy of the Board that prior to May 1, 1974, all institutions within the Utah System of Higher Education, for which the Board is "vested with the control, management, and supervision,"[2] shall have prepared for adoption by the respective Institutional Councils a statement of Academic Freedom, Professional Responsibility, and Tenure. By June 1, 1974, a copy of the adopted statement shall be filed with the Commissioner's Office. If a

[1] Utah, *The Utah Higher Education Act of 1969*, Section 15 (4), p. 24 (March 21, 1969).
[2] Ibid., Section 4, p. 16.

statement has not been submitted by this date, it will be assumed that this document supersedes existing and proposed institutional statements. Action on these Statements shall be taken by the State Board of Regents on or before the July 1974 Board meeting. In the interim (December 20, 1973 through July 1974) institutions will continue to function under existing institutional policies and procedures, with the exception of the section concerned with the Procedure for Discipline and Termination for Cause (pages 9-12 of this Statement). This section shall constitute the due process procedure for all institutions in the System upon its adoption by the Board. To assure minimum standards, the Board requests that each institution adopt specific statements of principle in each of the areas which are enumerated in this document. The material which follows should be considered exemplary of the kind of statement the institutions should prepare for Board adoption.

Statement of Academic Freedom, Professional Responsibility, and Tenure

The purpose of this Statement is to promote public understanding of academic freedom and tenure and agreement upon procedures to assure them in Utah colleges and universities. Institutions of higher education exist for the common good of the society which they serve and not to further the interest of either the individual faculty member or the institution as a whole. The common good depends upon the free search for truth and its free exposition.[1]

Institutions of higher education are committed to the solution of problems and controversies by the method of rational discussion. Acts of physical force or disruptive acts which interfere with campus activities, freedom of movement on the campus, or freedom for students to pursue their studies are the antithesis of academic freedom and responsibility as are acts which in effect deny freedom of speech, freedom to be heard, and freedom to pursue research of their own choosing to members of the academic community or to invited visitors to that community.[2]

"Academic freedom is the right of scholars in institutions of higher education freely to study, discuss, investigate, teach and publish."[3]

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom is also fundamental to the protection of the

[1] American Association of University Professors, "Academic Freedom and Tenure; 1940 Statement of Principles with Proposed Interpretive Comments," *AAUP Bulletin* 56:323-326, September, 1970, p. 324.

[2] American Association of State Colleges and Universities, "Academic Freedom, Responsibility, and Tenure," AASCU's Tenth Annual Meeting, San Antonio, Texas, November, 1970, p. 1.

[3] Ibid.

rights of the faculty member in teaching and of the student in learning. It carries with it duties correlative with rights.[1]

Academic Freedom

The faculty member is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return shall be based upon an understanding with the authorities of the institution.[2]

The faculty member is entitled to freedom in the classroom in discussing his subject, but he should be careful to present fairly the various scholarly views related to his subject and avoid presenting material which is not significantly related to the subject.[3]

Academic Responsibility

The concept of freedom is accompanied by an equally demanding concept of responsibility.[4] The college or university faculty member is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he is free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he understands that the public may judge his profession and his institution by his utterances. Hence, he is at all times accurate, exercises appropriate restraint, shows respect for the opinion of others, and makes every effort, when appropriate, to indicate that he is not an institutional spokesman.[5]

Professional Responsibilities to the Students

Standards:

1. Failure to meet scheduled classes without prior notice to students is excusable only for reasons beyond the control of the faculty member. Alteration of schedules, cancellation or rescheduling of classes should be done only for valid reasons and after adequate notice to students and to the department chairman or dean.

2. A faculty member maintains regular office hours during which he is available for consultation with his students, or otherwise assures his accessibility to students.

[1] American Association of University Professors, loc. cit.
[2] Ibid.
[3] Ibid.
[4] American Association of State Colleges and Universities, loc. cit.
[5] American Association of University Professors, loc. cit.

3. A faculty member, at the beginning of a course, informs students of the general content of the course, what he requires of the students, and the criteria upon which he evaluates their performance. Evaluations should be performed promptly, conscientiously, without prejudice, or favoritism, and consistent with the criteria stated at the beginning of the course. The criteria for evaluating student performance relates clearly to the legitimate academic purposes of the course.

4. While relevance and manner of communicating course content are judgmental matters, a faculty member avoids the misuse of the classroom by preempting substantial portions of class time for the presentation of his own views on topics unrelated to the subject matter of the course. Where the faculty member finds it pedagogically useful to advocate a position on controversial matters, he should exercise care to assure that opportunities exist for students to consider other views. The faculty member shall not reward agreement or penalize disagreement with his views on controversial topics.

5. A faculty member shall not use his position, authority, or relationship with students to obtain uncompensated labor for his own pecuniary gain. He may not ask students to perform services unrelated to legitimate requirements of a course unless the student is adequately compensated for such services. A faculty member shall not solicit gifts or favors where he has reason to believe that such gift or favor is motivated by a desire to secure some advantage.

6. A faculty member shall not plagiarize the work of a student. When a faculty member and a student work together, appropriate credit is given to the student. No faculty member limits or curtails the right of a student to publish or otherwise communicate the results of the student's own independent scholarly activities.

7. A faculty member does not reveal matters told to him in confidence by a student except as required by law. Personal matters relating to students are revealed by a faculty member only to persons entitled to such information by law or institutional regulations. A faculty member may, however, report his assessment of a student's performance and ability to persons logically and legitimately entitled to make such inquiries.

8. Because teaching is the primary responsibility of institutions of higher learning, the student has the right to expect substantial preparation appropriate to the course being taught. Repeated lack of preparation and/or unprofessional behavior which results in inferior performance by the instructor is a legitimate ground for student complaint.

Professional Responsibilities as Faculty

Standards:

1. A faculty member keeps himself informed and knowledgeable about developments in his field.
2. A faculty member does not permit the appearance that he is the author of work done by others.
3. When a faculty member serves as supervisor of the professional work of other persons, he shall not exploit[1] his position for personal or pecuniary gain.
4. When a faculty member is engaged in joint research or other professional effort with other persons he exhibits "reasonable care"[2] in meeting his obligations to his associates.
5. When a faculty member's commitments to the institution include research, publication, or other professional endeavors, the faculty member exhibits "reasonable care"[3] in meeting such commitments.
6. When reporting the results of his research or professional activities, a faculty member honestly describes his work and presents his conclusions.

Professional Responsibilities to the Institution

Standards:

1. A faculty member shall not misappropriate institutional property; nor knowingly use in violation of state or federal law, institutional property which has been entrusted to his care.
2. Professional activities which serve to maintain or improve a faculty member's academic skills have a legitimate relationship to his academic service; however, a faculty member shall comply with current institutional regulations restricting the amount of time he may spend on noninstitutional commitments, outside consulting, or other noninstitutional employment. He complies with state law and institutional regulations relating to conflicts of interest.

[1] To make unethical use of for one's own advantage or profit, *Webster's New World Dictionary of the American Language*, College Edition (The World Publishing Company, 1958), p. 513.

[2] *Reasonable Care*. This definition, which is familiar to the law, means that the level of performance required of a faculty member is that which is recognized in the profession as reasonable in light of obligations he has assumed, competing demands upon his energy and time, the nature and quality of his work, and all other circumstances which the academic community, after being fully informed, would properly take into account in determining whether he was discharging his responsibilities at an acceptable performance level.

[3] Ibid.

3. A faculty member avoids exploiting the institution's name or his own relation with the institution for personal reasons unrelated to his legitimate academic or professional activities. He shall not create the impression in public appearances or statements that he is representing the institution, unless in fact he is.

4. A faculty member does not maliciously destroy institutional property, purposely disrupt institutional programs, purposely inflict physical injury or threaten such injury to other persons on campus, or purposely interfere with the legitimate activities of other persons on the institution's campus; nor shall a faculty member purposely and unlawfully incite others to engage in such destruction, disruption, injury, or interference. Provided, however:

   (a) Nonviolent reaction from members of an audience at a meeting or program open to the public shall not be considered disruption or interference with legitimate activities, unless such reaction is done for the purpose of preventing the continuation of the meeting or program and such reaction has a reasonable likelihood of accomplishing such purpose.

   (b) Mere advocacy or expression shall not be considered incitement, unless the advocacy or expression poses a clear and present danger of the imminent occurrence of such destruction, disruption, injury, or interference.

5. A faculty member does not discriminate against anyone on the basis of race, religion, sex, national origin, citizenship, or political beliefs in making decisions or recommendations on admissions, employment, promotion, retention, tenure, or other professional matters.

6. A faculty member shall not knowingly mislead the institution by falsely asserting facts relevant to his qualifications as a faculty member or his eligibility for institutional benefits.

7. Faculty members comply with all Board and institutional rules and regulations.

Professional Responsibilities of Citizenship

Faculty members share the general duties of citizenship. A faculty member who violates state or federal law may expect no immunity or special protection by reason of his faculty status. As with other citizens, breaches of legal duty by faculty members are matters for disposition by the legal system. The institution reserves the right to bring proceedings against faculty members who are tried and convicted of unlawful conduct. (See Pages 13-14, item 6.)

Academic Tenure

Tenure is that provision of employment attained after completion of a probationary period during which the probationer's performance is found to be such as to make him an asset to the institution because of his abilities as a scholar, a teacher, or researcher.

Evaluations of faculty members for appointment, promotion, and tenure shall be made annually and contain provision for evaluation of: (a) excellence in teaching, research, or community service; (b) leadership and professional contributions beyond the basic assignment, i.e., to the institution, college, school or department, research, student advisement, and other types of non-institutional recognition; (c) attainment of creditable academic degrees and/or certificates in one's chosen field of professional responsibility; (d) evidence of experience — past and present (before coming to and during present assignment); (e) distinctive promise as a scholar, i.e., depth of understanding in his chosen field, contribution to knowledge, public presentation, etc.; and (f) the individual's general attitude toward his work, students, and colleagues.

Tenure is a means to certain ends, specifically: (1) freedom of teaching and research and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security are indispensable to the success of an institution in fulfilling its obligations to its students and to society.[1]

After the expiration of a probationary period, faculty members may qualify for tenure status (see Appendix A), and thereafter service is terminated only for Cause.[2, 3]

"In the interpretation of this principle it is understood that the following represents acceptable academic practice:

(1) "The terms and conditions of every appointment should be stated in writing and be in the possession of both institution and faculty member before the appointment is consummated."[4]

[1] American Association of University Professors, loc. cit.

[2] Ibid.

[3] *Cause.* For the purposes of this Statement, "Cause" shall be defined as: (1) *Adequate cause:* Continuation of academic tenure requires maintenance of "reasonable care" in the faculty member's performance as a teacher and scholar, and performance pursuant to the Standards within this Statement or individual institutional codes adopted by the Board (page 8, item (4)). Failure to abide by such Standards shall be considered reason for disciplinary proceedings. (2) *Medical incapacity:* A tenured faculty member may be dismissed or given a contract with substantially reduced status "for medical incapacity which does not allow the faculty member to perform his duties and responsibilities" (page 14, item 1). (3) *Financial exigencies:* A tenured faculty member may be dismissed or given a contract with substantially reduced status for demonstrated financial exigency or bonafide discontinuance of a program or department of instruction (page 14, item 2.). (4) *Retirement:* After a faculty member has reached retirement age, he may continue to serve without tenure upon invitation of the institution; however, his service may be terminated at any time following the completion of his last annual contract after reaching normal retirement age (page 10, item (1)).

[4] American Association of University Professors, loc. cit.

(2) The normal probationary period at all institutions within the Utah System of Higher Education shall be seven years. Beginning with the appointment to the rank of instructor or a higher rank, the probationary period shall include full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a faculty member is called to another institution it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years.[1] However, in exceptional cases, the probationary period may be extended, eliminated, or reduced, but only after deliberation by and approval of the Institutional Council.

(3) During the probationary period, a faculty member should have the academic freedom that all other members of the faculty have.[2]

(4) Continuation of academic tenure requires maintenance of "reasonable care"[3] in the faculty member's performance as a teacher and scholar, and performance pursuant to the Standards within this Statement or individual institutional codes adopted by the Board.[4]

(5) Termination for Cause[5] of a tenured appointment, or the dismissal for such Cause of a nontenured faculty member previous to the expiration of an annual appointment shall be subject to the provisions of Due Process, as outlined by the Statement or individual institutional codes adopted by the Board.[6]

Achievement of Tenure

Qualifications

Tenure may be awarded only to faculty members who hold the academic rank of Assistant Professor, Associate Professor, or Professor. A full-time certificated or professional member of the faculty at any institution which does not rank its faculty, i.e., — College of Eastern Utah, Utah Technical College/Provo, and Utah Technical College/Salt Lake — are eligible for tenure after a seven-year probationary period. Appointments to all adjunct, clinical, research, and visiting positions, and to all administrative positions, including the offices of president, provost, vice president, dean, director, chairman of division, and chairman of department, are without significance for the holding or achieving of tenure. Tenure is established only in an academic subdivision,

[1] Ibid.
[2] Ibid.
[3] *Reasonable Care*, loc. cit.
[4] American Association of State Colleges and Universities, op. cit., p. 2.
[5] *Cause*, loc. cit.
[6] American Association of University Professors, loc. cit.

such as a department or a school or college, if such school or college is not divided into departments, and in the institutional libraries. In other university or college subdivisions not designated as academic departments, schools, or colleges, appointments to tenure ranks are not made and tenure is not granted. Individuals in administrative positions may hold a faculty position with tenure in an academic subdivision.

Achievement of Tenure by Promotion or Award

A faculty member is eligible for tenure after probation and upon the earliest of: (1) promotion to the rank of Professor, (2) promotion to the rank of Associate Professor, or (3) the effective date of an award of tenure. If an award of tenure has not been made on or before the thirtieth day of June in his final probationary year of service,[1] the faculty member may: (1) seek employment elsewhere, or (2) continue to serve without tenure upon invitation of the institution.

Advance Notice of Termination or Reduction in Status

Any nontenured faculty member whose annual appointment the administration wishes not to continue, or wishes to continue with substantially reduced status, shall be given advance notice, in writing, by the President, as follows:

(1) for those having served more than one academic year, notice shall be given not later than December 15 of the academic year, if the appointment expires at the end of that year, or (2) when given within the first year of the faculty member's appointment may be given anytime prior to March 31st of that year.

The right of advance notice shall not apply to faculty members serving under appointments for one year, or appointments stipulating that they will not be renewed, or to faculty members whose appointments are to be terminated or modified for Cause,[2] or to individuals serving in any adjunct, clinical, research, visiting, or administrative positions.[3]

Procedure for Discipline and Termination for Cause[4]

The provisions governing termination for Cause shall include the following:

[1] *Notification* of nonrenewal for those individuals who will not receive tenure will coincide with the timetable enumerated in ¶ 4, page 9.

[2] Cause in this instance (¶ 5, page 9) does not refer to financial exigencies or to bona fide discontinuance of a program or department of instruction; conditions for advance notice for such terminations or modifications of appointments are outlined on pages 14-15 of this document.

[3] An administrator may hold tenure in an academic department and thus would be entitled to advance notice of termination as described in ¶ 4, page 9.

[4] *Cause*, loc. cit.

(1) No faculty member who has achieved tenure shall be dismissed without Cause. Dismissals for Cause shall be made only after proper investigation by the administrative officers of the institution, a hearing by a committee (if such is requested), and action by the Institutional Council upon recommendation by the President, except in the case of termination due to a faculty member's having reached retirement age.

(2) A recommendation by the President for termination for Cause of the services of a faculty member who has achieved tenure may be considered by a hearing committee. A person may also be heard by the Institutional Council (if he so requests). In both instances, he shall be permitted to have an advisor of his own choosing who may act as counsel. A record, stenographic or electronic, shall be provided by each institution for future reference.

Due Process

The President may, upon his own initiative, or upon the receipt of complaints from any person; and upon request of the Institutional Council shall, initiate proceedings for discipline, suspension, or termination of a faculty member, whenever he is given reasonable cause to believe that such faculty member has failed to comply with the Standards set forth in this Statement or individual institutional codes approved by the Board. The administration shall devise a procedure for determining if a complaint represents adequate grounds for disciplinary proceedings against a faculty member. In all disciplinary, suspension, or termination proceedings, the following rules and procedures shall govern:

(1) *Notice.* The President, or his designee, shall cause written notice to be delivered personally, or by certified mail, return receipt requested, to the faculty member under investigation. Such notice shall contain the following:

a. A concise statement of the facts, conduct, or circumstances reported to constitute failure to comply with the Standards set forth in this Statement or individual institutional codes approved by the Board.

b. A statement of the action proposed to be taken, in the event the allegations of noncompliance are sustained by a hearing committee.

c. A statement informing the faculty member of his rights to be heard in conference with the President, or the President's designee, and that such conference must be requested in writing to the President, by the faculty member, and further, that the faculty member may have an advisor or counsel of his own choosing present at such conference, and that such conference must be requested within five days after receipt of the notice by the facul-

ty member, and that such conference must be held within ten days after such receipt by the faculty member. The purpose of the conference is to attempt to reach an agreement or settlement, thereby precluding the necessity of a formal hearing.

d. The time and place of the hearing before a committee and, as previously stated, the fact that a faculty member may be represented at such hearing by an advisor or counsel of his own choosing.

e. That within 20 days of the receipt of the notice of hearing, the faculty member, if he wishes to contest such charges, shall file with the President, or his designee, his answer, in writing to the charges made; and that failure to do so will result in the entry of his default in the premises, and the President may then take appropriate action on his own motion, or refer the matter to a hearing committee for its recommendation.

(2) *Procedures Subsequent to Notice.* In the event that the charges made can be and are disposed of by the President at the time of the presidential conference, no hearing need be held.

Emergencies may be grounds for a reasonable extension of the time within which an answer must be filed, but such emergencies must be of a serious and compelling nature, and any such extension shall be within the sole discretion of the President.

The hearing shall be held not less than 30 nor more than 45 days after the faculty member has received written notice of the hearing, provided, however, that the faculty member's written answer has been duly filed. The President shall convene a hearing committee within the period of time aforesaid.

Within five days prior to the date set for the hearing, a prehearing conference will be held before the President, or his designee, and a faculty member elected by the faculty senate or the faculty at large. The prehearing examiners shall delineate the issues to be examined at the hearing. At this prehearing conference the administration and the faculty member shall make available to each other, upon request, a list of their witnesses to be called and the documentary evidence to be introduced at the hearing.

The hearing before a committee may be continued upon good cause shown by either the administration or the faculty member. The hearing committee may require the attendance of witnesses, and shall do so at the request of the complainant, of the administration, or of the faculty member. All witnesses call by either side may be examined and cross-examined.

(3) *Composition of Hearing Committee.* The hearing committee shall be composed of five, seven, or nine members. Said committee shall consist of faculty and administrators with the majority of the committee being faculty members. A majority vote shall control the action of the committee.

(4) *Appeals.* An appeal may be taken from the decision of the hearing committees to the President ,whose decision shall be final, unless the Institutional Council chooses to review the President's decision; or to the Institutional Council, whose decision shall be final, unless the State Board of Regents is duly petitioned to review the decision of the Institutional Council. If granted at the discretion of the Board, such review shall be a review of the record only for the purpose of determining if procedural due process has been granted. An appeal to the President shall be on the basis of the record only, but an appeal to the Institutional Council may take such form as that body elects. All appeals shall be made within 15 days of receipt of written notice of the decision to be appealed from.

Suspension Pending Action

In the event that a faculty member is charged with a serious offense affecting the public interest, the President may suspend the faculty member from his professional duties upon written notification to him and the Institutional Council. This suspension shall remain in effect until such time as the faculty member has resigned, been acquitted, or been dismissed. The faculty member shall draw his salary during suspension; but in the event the offense charged is substantiated and the faculty member is not reinstated, the salary drawn during suspension shall be returned to the institution within a reasonable time thereafter.

Sanctions

1. The following sanctions are permissible by this Statement:
   (a) verbal censure
   (b) written reprimand
   (c) probation
   (d) suspension without pay (not exceeding one year)
   (e) dismissal

   Combinations of sanctions may be imposed where appropriate and consistent with the provisions of sections 2 through 4 under the general heading of Sanctions. When a sanction less than dismissal is imposed, the terms of imposition may include a requirement that the faculty member take reasonable action to make restitution or remedy a situation created by a violation of a Standard.

2. Sanctions may be imposed on a faculty member when it has been determined by proceedings pursuant to this Statement (or institutional codes approved by the Board) that he has violated a Standard, if the imposition of the sanctions will serve one or more of the following purposes:

   (a) to induce self-improvement and reform by a faculty member whose conduct demonstrates the need for self-improvement and reform,

   (b) to indicate to the faculty member the seriousness of his violation and thereby deter him from future violations,

   (c) to reassure the institutional community that violations of the Standards which the faculty member has broken will not be tolerated, thereby serving to maintain respect for and commitment to the Standards by other members of the institutional community.

   (d) to remove from institutional employment faculty members whose inability to continue in beneficial service to the institution has been clearly demonstrated.

3. Sanctions being at best a painful necessity, the decision to impose them should be guided by mercy and restraint. Sanctions shall be imposed when:

   (a) the purposes set forth in 2 above cannot be adequately served by less severe actions;

   (b) the sanction is not disproportionately severe in relationship to the violation of the Standard for which it is imposed; and

   (c) the imposition of such sanction is fair and just to the faculty member involved, giving due consideration to his situation, to his prior service to the institution, and to any relevant matters tending to mitigate the seriousness of his violation.

4. When nonpunitive measures such as guidance, counseling, therapy, leave of absence, voluntary resignation, or early retirement are available and will provide reasonable assurance that the faculty member will not repeat his violation of the Standards; if the faculty member consents thereto, such measures should be taken in lieu of disciplinary sanctions under this Statement or individual institutional codes approved by the Board, unless substantial institutional interests would thereby be undermined.

5. No faculty member shall be twice subject to proceedings under this Statement or individual institutional codes approved by the Board for the same act. A rehearing at the direction of the President following an appeal by the faculty member is not a second proceeding.

6. Where a faculty member has been tried and convicted in the courts he shall not be subjected to proceedings under this Statement or individual

institutional codes approved by the Board for the same acts unless the acts alleged raise serious questions about the faculty member's ability to perform as a faculty member. Where a faculty member has been tried and acquitted, such acquittal shall be conclusively presumed to establish his innocence of the acts charged in the criminal case. As used herein, acquittal includes dismissal of charges for insufficient evidence, after trial has commenced.

Termination or Other Changes in Status for Other Cause[1]

A faculty member may be terminated or may receive a contract with substantially reduced status for cause other than violation of the Standards in the following situations:

1. for medical incapacity which does not allow the faculty member to perform his duties and responsibilities.

   (a) Proceedings to terminate or to award a contract with substantially reduced status to a faculty member for medical reasons shall be initiated by a written statement alleging medical incapacity made to the President, or his designee, by the faculty member's dean, department chairman, or supervisor.

   (b) Within 20 days after receipt of such written allegation, the President or his designee, shall notify the faculty member thereof and inform him of his right to a conference and to be examined, at institutional expense, by two physicians from lists submitted by the President, or his designee, and the faculty member.

   (c) If the faculty member refused or is unable to submit to medical examination or if the medical examination is made and the examiners find the faculty member to be suffering from a medical condition which could substantially and adversely affect the performance of his duties, the President, or his designee, may certify the matter to a hearing committee for further proceedings.

   (d) Thereafter the procedures set forth in pages 9–12[2] of this Statement shall be followed.

2. demonstrated financial exigency or bona fide discontinuance of a program or department of instruction.

   (a) When a faculty member with tenure is terminated or given a renewal contract with a substantially reduced status because of demonstrated

[1] Under the section, "Termination or Other Changes in Status for Other Cause," 'Other Cause' is defined to mean medical incapacity or financial exigencies, pp. 14-15.

[2] Procedures for Discipline and Termination for Cause.

financial exigency or bona fide discontinuance of a program or department of instruction, he will be given notice thereof as soon as possible and shall never be given less than six months' notice unless in lieu thereof, he is given severance salary for six months in case of termination or the difference between his old salary and the salary in the reduced status in the case of reduction in status.

(b) A full report of any termination or renewal with substantially reduced status pursuant to this section shall be furnished to the President and a hearing committee.

Terminations not Governed by this Statement
Resignations, Applicability

Termination of Nontenured Faculty Member

This Statement or individual institutional codes adopted by the Board does not require proceedings to terminate the employment of a nontenured faculty member at the end of his contract period by nonrenewal of his contract except as hereinafter specified.

Institutions shall maintain an annual review procedure, recording the progress of nontenured faculty members, as the basis upon which to award or deny tenure. If the employment of a nontenured faculty member is terminated, the President may, in his discretion, upon the request of the faculty member, supply the reasons for this nonrenewal. Nevertheless, if a nontenured faculty member alleges that the nonrenewal of his contract is based upon discriminatory or prejudicial treatment in violation of his constitutional rights, he shall be accorded the procedural due process provided in pages 9–12 of this Statement or in individual institutional codes adopted by the Board. Upon written notice of such an allegation to the President for a hearing the faculty members shall have the burden of introducing competent evidence sufficient to support a decision that the nonrenewal was based on discriminatory, prejudicial facts and reasons. Review on appeal shall be limited to a determination of whether the President has met the nonprejudicial, nondiscriminatory requirements.

Resignations

Resignations for immediate termination of employment shall be accepted only upon recommendation of the President and approval of the Institutional Council.

Decisions to resign at the end of the current contract period shall be submitted in writing to the appropriate dean or director three months prior to the end of the contract time, and in no case later than thirty days after receiving a contract for the coming academic year. The appropriate dean or director will advise the President of such decision, and the President will make

whatever announcements may be necessary and desirable. Termination of a contract before the end of the contract period results in forfeiture of benefits, such as accumulated leave and all rights and privileges as a faculty member. Faculty members who resign at the end of their contract also terminate all rights and privileges, such as rank and tenure, which they enjoyed as a faculty member.

Prior Conduct

Conduct which would breach a Standard of this Statement or of individual institutional codes adopted by the Board committed prior to their final adoption by the Board shall not be a basis for proceedings under this Statement. Where such conduct would constitute a basis for dismissal for Cause under a previously applicable regulation, proceedings may be brought in accordance with such regulation.

The Board reserves the right to require amendment of any Standards adopted by member institutions of the State System of Higher Education which it feels do not comport with the intent of the foregoing statements.

Appendices

APPENDIX A

It is the recommendation of the State Board of Regents that quotas not be imposed. In lieu of a quota system, each president shall, by various means at his disposal, develop a rigorous annual review procedure for all non-tenured faculty members.

Each president within the System shall prepare and file for adoption with the respective institutional councils, with a copy to the Board, a five-year plan showing how they propose to limit the number of faculty members awarded tenure.[1]

Institutions within the System shall also submit to their respective Institutional Councils, with a copy to the State Board of Regents, an annual report revealing the number of faculty members eligible for tenure and the numbers awarded tenure.

[1] It is the Board's policy that prior to May 1, 1974, all institutions within the Utah System of Higher Education, for which the Board is "vested with the control, management, and supervision,"* shall have prepared for adoption by the respective Institutional Councils the above requested information. By June 1, 1974, a copy of the adopted policy shall be filed with the Commissioner's Office. Institutional proposals will be discussed at the July 1974 Board meeting. *[Utah, *The Utah Higher Education Act of 1969*, Section 4, p. 16 (March 21, 1969)].